

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA-LAND DIVISION

LAND APPEAL NO.105 OF 2022

(C/f Application No.79 of 2019 in the District Land and Housing Tribunal for Babati

District at Babati)

ISSA NDEGE APPELLANT

Vs

TLAGHASI SHANGWE..... RESPONDENT

JUDGMENT

Date of last order:28-2-2023

Date of judgment:27-3-2023

B.K.PHILLIP,J

The appellant herein lodged this appeal challenging the judgment of the District Land and Housing Tribunal for Babati District at Babati (Henceforth "The Land Tribunal"). The grounds of appeal are reproduced verbatim hereunder;

- (i) That, the trial tribunal's proceedings are tainted with gross incurable procedural irregularities which render the whole decision thereof null and void.
- (ii) That, the trial tribunal erred in law and fact in failing to properly evaluate the evidence adduced at the trial and instead chose to gloss over it to justify the decision reached.

- (iii) That, the trial tribunal erred in law and fact by not finding that the Respondent herein has no *locus stand* to institute the suit against the appellant.
- (iv) That, the trial tribunal erred both in law and in fact in believing fabricated and false evidence of the Respondent concerning the land in dispute.

A brief background to this appeal is as follows; that the respondent herein was the applicant at the Land Tribunal. He instituted a case against the appellant herein claiming that the appellant trespassed into his farmland measuring three quarter ($\frac{3}{4}$) of an acre located at Nakwa Village, Bagara Ward in Babati District. After full trial the Land Tribunal decided the matter in the favour of the respondent. Aggrieved, the appellant lodged the instant appeal.

At the hearing of this appeal the learned advocates John Shirima and Paschal Peter appeared for the appellant and respondent respectively. This appeal was heard *viva voce*. Mr. Shirima started his submission by pointing out that he was going to submit for the 1st ground of appeal only, thus he abandoned the 2nd, 3rd and 4th ground of appeal. His submission was to the effect that the proceedings of the Land Tribunal were in contravention of Regulation 12 (1) (2) and (3) of the Land Dispute Courts (the District Land and Housing Tribunal) Regulation GN.No. 174 of 2003, (Henceforth "The Land Tribunal Regulations").He contended that the aforesaid mentioned Land Tribunal Regulation was not complied with because on the first day of hearing the contents of the application were not read over before commencement of the hearing. He strongly argued that the proceedings of the Land tribunal show that the contents of the application were not read and explained

to the appellant as required by the law, thus the same are tainted with serious irregularity.

Moreover, he argued that under Regulation 19 (2) of the Land Tribunal Regulations, the Chairman of the Land Tribunal (Henceforth "the Chairman") is required to read the opinion of the assessors before the parties and that is supposed to be done prior to the composition of the judgment. He contended that in this application the opinion of the assessors were not read over before the parties as required by the law. He maintained that the omission is a serious irregularity and fatal to the proceedings. To bolster his argument, he cited the case of **Edina Adam Kibona Vs Absolom Swebe (Sheli) ,Civil Appeal No. 286 of 2017** and **Sikuzani Saidi Magambo and another Vs Mohamed Roble, Civil Appeal No. 197 of 2018** (both unreported).

In rebuttal, Mr. Paschal Peter refuted Mr. Shirima's contention that the chairman did not comply with Regulation 12 (1) (2) and (3) of the Land Tribunal Regulations. He contended that the contents of the application were read over prior to the commencement of the hearing and the appellant denied the respondent's claims. Thereafter hearing of the application commenced.

With regard to Regulation 19 (2) of the Land Tribunal Regulations, Mr Peter submitted that the opinions of the assessors were read over before the parties as required by the law. He insisted that no any Land Tribunal Regulation was contravened. He prayed this appeal to be dismissed with costs.

In rejoinder, Mr. Shirima reiterated his submitted in chief. He was emphatic that the typed proceedings of the Land Tribunal at page 5

show that the contents of the application were not read and explained to the appellant before the commencement of the hearing.

Having carefully analysed the competing arguments raised by the learned advocates, I am of the opinion that the issue for determination in this appeal is only one, to wit; whether or not the proceedings of the Land Tribunal are tainted with fatal irregularities.

Regulation 12 (1) (2) (3) of the Land Tribunal Regulations reads as follows;

"12 (1). The Chairman shall at the commencement of hearing, read and explain the contents of the application to the respondent.

(2) The respondent shall, after understanding the details of the application under sub-regulation (1) be required either to admit the claim or part of the claim or deny.

(3) The Tribunal shall-

(a) where the respondent has admitted the claim, records his words and proceed to make orders as it thinks fit.

(b) where the respondent does not admit the claim or part of the claim, lead the parties with their advocates if any to frame issues."

Upon perusing the proceedings of the Land Tribunal, i noted that the same do not indicate that the contents of the application were read over and explained to the appellant herein. However, to my understanding the import of the whole of Regulation 12 of the Land Tribunal Regulations is to shorten the time of trial in case the respondent admits the whole or part of the claims levelled against him/her. Now, the pertinent question here is; is the omission to read and explain the contents of the application to the respondent fatal to the extent of vitiating the proceedings?. In my considered opinion, the

same is not fatal because the respondent had an opportunity to admit the claims if he wished to do so after hearing the applicant's testimony and that could serve the same purpose envisaged in Regulation 12 of the Land Tribunal Regulations, unless the respondent shows that he /she was prejudiced by the omission. In this appeal Mr. Shirima did not submit that his client was prejudiced by the omission aforesaid.

In addition to the above, in reality the appellant was knowledgeable of the contents of the application because he filed his written statement of defence. So, it is the finding of this court that the appellant was not prejudiced in anyway by the chairman's failure to read and explain to him the contents of the application.

With regard to Regulation 19 (2) of the Land Tribunal Regulations, there is no dispute that the same provides that the chairman shall, before making his judgment, require every assessor present at the conclusion of hearing to give his/her opinion in writing. The above cited Regulation has been a subject of discussion in the case of **Sikuzani Said Magambo** (supra) and **Edina Adam Kibona** (supra) in which the Court of Appeal held that the chairman's failure to pronounce at the closure of the hearing of the defence case that assessors are required to make their opinion in writing and accord them the opportunity to do, and present the same before the parties prior to the composition of the judgment is fatal.

In the case at hand, it is on record that at the closure of the defence case the chairman ordered the adjournment of the matter to 7th June 2022 to give time to the assessors to prepare their opinion. On 7th June 2022 the Chairman of the Land Tribunal acknowledged the

receipt of the opinion of the assessors and the same were presented before the Tribunal. However, on that date only the respondent's advocate was present before the Tribunal. The appellant was absent. In addition, it is in record that the assessors' opinion were made in writing and forms part of the records of the Land Tribunal. With due respect to Mr. Shirima the cases he relied upon in his submission are distinguishable from the case in hand. As I have explained herein above, in this case the Chairman ordered the assessors to prepared their opinion and fixed a specific date for receiving the same whereas in the cases cited by Mr. shirima, the Chairman did not make any order for the assessors to prepare their opinion and present the same before the Tribunal.

In the upshot, the sole ground of appeal raised by the appellant has no merit. This appeal is hereby dismissed with costs.



Dated this 27th day of March 2023


B.K.PHILLIP

JUDGE.